

Federico Ceretti	Chief Executive Officer of FIM Limited. Founder member and Chief Executive Officer of FIM Advisers LLP. Settlor and one of a class of discretionary beneficiaries of The El Prela Trust. An Italian citizen, who has been resident in the United Kingdom for more than 24 years. Mr Ceretti holds a degree in Business Administration from the University of Pavia, Italy. Prior to joining FIM Limited, he worked in various positions at Merrill Lynch Pierce Fenner and Smith in London (1985-1986).
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The Kingate Funds

20. Kingate Global Fund Limited was incorporated on 11 February 1994. It was established as a fund of funds and originally had one class of shares denominated in US\$ (class A). In February/March 1995, a further class of US\$ shares (class B) was created. On 1 January 1996, a third class of shares, denominated in Deutsche Marks (class DM) was created. The class A shares were cancelled in late 1996/early 1997, leaving only classes B and DM. Class DM was later spun off into a separate legal entity, Kingate Euro Fund Limited, which was incorporated on or about 19 April 2000. Kingate Global Fund Limited ("Global Fund") and Kingate Euro Fund Limited ("Euro Fund") (together, the "Kingate Funds") are both open-ended investment companies established under the laws of the British Virgin Islands. The Kingate Funds are recognised as professional mutual funds under the Territory of the British Virgin Islands Mutual Funds Act, 1996.
21. The Kingate Funds seek long-term capital growth by allocating share capital to an investment advisor selected to execute the Kingate Funds' investment objectives. Global Fund's most recent Information Memorandum dated 6 October 2008 (at tab 4) describes that Fund's investment objective as follows:
- "The Fund's investment objective is long-term capital appreciation. The Fund seeks to obtain capital appreciation of its assets to the utilisation of a non-traditional stock/options trading strategy. In attempting to achieve its objective, the Fund has established a discretionary account with the Investment Advisor (as defined herein) who is based in the United States and who invests or trades in a wide range of equity securities, and, to a lesser extent, other securities and derivatives. In certain instances and at certain times, the Manager (as defined herein) may directly invest certain of the Fund's assets, rather than allocating such assets to the Investment Advisor as may be consistent with, and in furtherance of, the Fund's investment objective. All investments involve investment risk and may result in losses instead of gains, as the achievement of the Fund's investment objective cannot be assured."*
22. Euro Fund's most recent Information Memorandum dated 6 October 2008 (tab 5) contains the same investment objective description, save that it refers to establishing "a discretionary account with an Investment Advisor" (emphasis added).
23. Prospective investors in the Kingate Funds subscribed for participating common shares (the "Shares") of the relevant Fund at a net price per share equal to the net asset value (as defined) of those Shares, plus any applicable subscription fee. As of 31 December 2007, the net asset value per Share of Global Fund was US\$421.37. The net asset value per Share of Euro Fund as at the same date was €164.89. The majority of the investor funds deriving from subscriptions for Shares were passed to the investment advisor of the Kingate Funds, in this case BMIS. At all relevant times, it was understood by the Applicants (and is believed to have been understood by all except Madoff himself) that assets passing from the Kingate Funds to BMIS were invested using BMIS's so-called "split-strike conversion" strategy which was

understood to limit losses when a stock price declined while still affording a capped upside potential.

24. The Kingate Funds engaged in very limited marketing activity and only dealt with professional (as opposed to private) investors. Early on in their existence and as a result of their success, the Kingate Funds became well known among professional hedge fund investors. This led to a situation where professional investors tended to approach the Kingate Funds' manager (Kingate Management Limited) without solicitation. Prospective investors were provided with a copy of the relevant information memorandum relating to the Kingate Funds (see examples at tabs 4 and 5) and a basic fact sheet containing a summary of the relevant Fund's strategy and their returns (see examples at tab 6).
25. During the course of its investment in a Fund, each investor was kept informed as to the Fund's performance by being sent the following communications:
- a weekly email showing an estimated net asset value of the Fund's Shares for the previous week (example at tab 7);
 - a monthly email showing the estimated and final net asset value for the end of the month (example at tab 8);
 - beginning in June 2008, a monthly letter describing the Fund's activity in the previous month (examples at tab 9).
26. In addition, following publication of the Kingate Funds' annual audited amounts, the weekly and monthly emails referred to above made reference to the fact that these financial statements were available upon request from the manager of the Kingate Funds, Kingate Management Limited (example at tab 10).

Kingate Management Limited - Management of the Kingate Funds

27. Global Fund entered into a management agreement with Kingate Management Limited ("KML") on 1 January 2006 (superseding and replacing previous management agreements between those parties dating back to 1994). Euro Fund entered into a management agreement with KML on 1 May 2000. Both management agreements are governed by the laws of Bermuda. Copies of these management agreements (respectively the "Global Management Agreement" and the "Euro Management Agreement", each a "Management Agreement" and together the "Management Agreements") are at tabs 11 and 12.

Global Management Agreement

28. Pursuant to clause 1.1 of the Global Management Agreement and under the ultimate supervision of the directors of Global Fund from time to time as provided in Global Fund's Articles of Association and Information Memorandum dated 1 January 2006, KML is:

"responsible for performing or obtaining the performance of, and is hereby authorised and empowered to perform, or obtain the performance of, all of the following duties and functions necessary or appropriate in connection with the management of the Fund:

- (a) *Providing investment management services as described in Part II of this Agreement;*
- (b) *Providing administrative services as described in Part III of this Agreement; and*

(c) *Providing [marketing and share sale services] as described in Part IV of this Agreement."*

29. The "investment management services" described in Part II of the Global Management Agreement comprise effecting *"the investment strategy for the investment of the assets of Global Fund as well as evaluating and selecting potential investments which are consistent with that strategy"*.
30. The "administrative services" described in Part III of the Global Management Agreement comprise assisting Global Fund *"in the performance of certain of its administrative duties as may be agreed by the parties from time to time"*.
31. The "marketing and share sale services" described in Part IV of the Global Management Agreement include:
- performing (or procuring the performance of) *"all duties and functions in connection with the sale of any Shares of the Fund and advising the Fund on general matters affecting the marketing of the Shares"*;
 - acting *"in respect of the sale of any of the Fund's Shares"*; and
 - appointing *"consultants, agents, securities dealers and other financial institutions as authorized dealers to solicit applications to purchase Shares"*.
32. Under the Global Management Agreement, KML has full power to delegate as appropriate, or in its discretion, any of the duties or obligations arising under that agreement *"to one or more other persons or entities whether affiliated with or independent of KML"* (clause 5.9). KML is entitled to receive fees from Global Fund for performance of its duties at an annual rate of 1.5% of the net asset value of the Fund (clause 5.2(a)).

Euro Management Agreement

33. Pursuant to clause 2.2 of the Euro Management Agreement, KML has:
- "full discretion and authority, without obtaining the Fund's prior approval, to implement the investment Objective and investment program set forth in the Information Memorandum or Operative Documents and to manage the investment and reinvestment of the assets of the Fund in such manner as [KML] considers appropriate, market the Securities and otherwise act in connection with the directions of the Fund"*.
34. Under the Euro Management Agreement, KML is authorised to delegate any of the duties or obligations imposed on it pursuant to that agreement, to one or more persons or entities, whether affiliated with or independent of KML (clause 4.8(a)). KML is authorised to engage consultants and other advisors to assist it or its delegates in connection with its or their duties (clause 4.9). KML is also entitled to receive fees from Euro Fund for performance of its duties under that agreement (clause 4). This fee amounted to an annual rate of 1.5% of the month-end net asset value of the Euro Fund attributable to the Shares. In addition, KML received an administration fee of 0.10% per annum of the month-end net asset value of the Euro Fund in respect of the foreign exchange hedging activity undertaken by the Euro Fund.

Disclosure to third parties of KML's role as manager to the Kingate Funds

35. KML's role as manager of the Kingate Funds was fully disclosed, including to potential investors.

Information Memoranda

36. By way of example, the most recent Information Memorandum for Global Fund dated 6 October 2008 (at tab 4) contained the following statement:

"Kingate Management Limited has been appointed as the Manager of the Fund's capital (the "Manager"). The Manager was duly incorporated under the laws of Bermuda. The Manager is not registered with the U.S. Securities and Exchange Commission as a registered investment adviser under the U.S. Investment Advisers Act of 1940, as amended, nor does it intend to do so in the near future.

....

The Manager performs services pursuant to the Manager Agreement effective January 1, 2006. Pursuant to the terms of the Manager Agreement, the Manager has agreed (i) to manage all aspects of the investment advisory services to the Fund, including the selection and evaluation of the Investment Advisor and (ii) to arrange for the performance of all accounting and administrative services which may be required by the Fund's operations. The Manager Agreement authorizes the Manager to delegate responsibilities to others, subject to retaining certain responsibilities for evaluating and co-ordinating the services offered by others....."

37. The most recent Information Memorandum for Euro Fund dated 6 October 2008 (at tab 5) contained the following statement:

"Kingate Management Limited has been appointed as the Manager of the Fund's capital (the "Manager"). The Manager was duly incorporated under the laws of Bermuda ...

...

The Manager performs services pursuant to the Manager Agreement. Pursuant to the terms of the Manager Agreement, the Manager has agreed (i) to manage all aspects of the investment advisory services provided to the Fund, including the selection and evaluation of the Investment Advisor and (ii) to arrange for the performance of all accounting and administrative services which may be required by the Fund's operations and (iii) make the decisions with regard to the Hedging Transactions utilising the recommendation of the Consultant. The Manager Agreement authorises the Manager to delegate responsibilities to others, subject to retaining certain responsibilities for evaluating and co-ordinating the services offered by others. The Manager is also permitted to manage directly the investment of a portion of the investment portfolio of the Fund and may do so from time to time as conditions warrant.

...."

Financial Statements

38. The audited financial statements for Global Fund as at 31 December 2007 (at tab 13) were prepared by Global Fund's independent auditors, PricewaterhouseCoopers ("PwC"). They contain the following disclosure regarding KML:

"Investment manager

The Company is managed by [KML], a company duly incorporated under the laws of Bermuda. [KML] is responsible for providing the investment advisory, accounting and administrative services required by the Company. For its services, [KML] receives a monthly fee calculated at an annual rate equal to 1.5% of the month end

net asset value attributable to the Company, paid in arrears at the close of each month. Management and administration fees incurred by the Company during the year were \$38,783,479 (2006 - \$34,408,746). As of December 31, 2007, management and administration fees of \$3,390,709 (2006 - \$3,081,584) were payable. There are no performance fees associated with the Company."

39. The audited financial statements for Euro Fund as at 31 December 2007 (at tab 14) were prepared by the Euro Fund's independent auditors, PwC. They contain the following disclosure regarding KML:

"Investment manager

The Company is managed by [KML], a company duly incorporated under the laws of Bermuda. [KML] is responsible for providing the investment advisory, accounting and administrative services required by the Company. For its services, [KML] receives a monthly fee calculated at an annual rate equal to 1.5% of the month end net asset value attributable to the Company, paid in arrears at the close of each month. In addition, [KML] also receives a monthly administration fee at an annual rate of 0.10% of the month end net asset value attributable to the Company, paid in arrears at the close of each month. Management and administration fees incurred by the Company during the year were €9,054,137 (2006 - €7,883,958). As of December 31, 2007, management and administration fees of €840,783 (2006 - €700,573) were payable. There are no performance fees associated with the Company."

Key duties under Management Agreements

40. In essence, the key duties of KML pursuant to the Management Agreements can be summarised as follows:
- Investment management services - KML is responsible for all aspects of the investment advisory services provided to the Funds, including the selection of the investment advisor. KML is responsible for reviewing, from time to time, the activity of the investment advisor to ensure that it complies with the Funds' investment guidelines and also undertaking all actions that may be necessary in the furtherance of the investment objectives of the Kingate Funds;
 - Marketing and placement services - KML is responsible for performing all necessary duties and functions in connection with the sales of the shares of the Kingate Funds and advising the Kingate Funds on general matters affecting the marketing of the shares, including:
 - Soliciting and introducing prospective investors to the Kingate Funds;
 - Maintaining regular contact and updating existing and prospective investors regarding investment results and other information regarding the Kingate Funds;
 - Preparing and distributing marketing material and offering documents to investors and prospective investors; and
 - Appointing authorised dealers and sales agents to assist with the sale of shares of the Kingate Funds; and

- General management and administration services - KML is responsible for ensuring the proper functioning of the Kingate Funds, and its duties in this regard include:
 - Arranging for the retention of the fund administrators and supervising the fund administrators in all their functions;
 - Ensuring that adequate procedures are undertaken by the fund administrators to comply with all applicable anti-money laundering laws;
 - Advising with regard to all aspects of subscriptions, redemptions, and transfers of the Funds' shares;
 - Advising with regard to all aspects of the Funds' finances, including advising as to the payment of invoices payable by the Funds, and advising the Funds with regard to instructions to the banks about receiving/paying out money to and from the Funds;
 - Reviewing periodically the Funds' offering documents to ensure continued compliance with applicable laws and regulations;
 - Overseeing the preparation of the Funds' interim and annual financial statements, including organizing, coordinating and facilitating the audit of the Funds;
 - Maintaining contact with the Funds' legal advisors in any jurisdiction where the Funds may operate with a view to advising the Funds on new legal and regulatory developments that may affect the structure of the Funds, their marketability, and their compliance with laws in general;
 - Maintaining contact with the regulatory authorities in any jurisdiction where the Funds may operate; and
 - In general, undertaking all actions that may be necessary for the proper administration of the Funds, and advising the Funds on all aspects related to Funds' administration, accounting, legal and operational matters.

41. In accordance with the authority provided to it pursuant to the Management Agreements, KML:

- delegated certain of its investment management duties to an investment advisor, BMIS;
- delegated certain of its administrative functions (including the calculation of net asset value, the procuring of subscriptions and redemptions, the maintenance of the Kingate Funds' shareholder registers and other administrative functions) to Citi Hedge Fund Services Limited (formerly Hemisphere Management Limited and BISYS Hedge Fund Services Limited which was acquired by Citi Hedge Fund Services Limited, a subsidiary of Citigroup Inc., in approximately 2007);
- delegated custody of the assets of the Kingate Funds to The Bank of Bermuda Limited (subsequently acquired by HSBC Holdings plc); and
- delegated certain of its marketing and placement, general operational and administration services to FIM Limited (latterly FIM Advisers LLP, "FIM").

BMIS's role as investment advisor to the Kingate Funds

42. KML appointed BMIS as investment advisor of the assets of both Global Fund and Euro Fund. The Kingate Funds each opened brokerage accounts with BMIS and gave BMIS authority to manage their respective portfolios on a discretionary basis. The Kingate Funds also gave BMIS strict investment guidelines, restricting BMIS to so-called "split-strike conversion" investments (see copies of the Trading Authorization Directive for both Kingate Funds, at tab 15).
43. BMIS did not receive a direct fee for its services to the Kingate Funds. Instead, it was understood that BMIS earned trading commissions guaranteed by being the counterparty to the Funds. Each transaction for the Funds involved four elements:
- (a) A market participant sells stock;
 - (b) BMIS buys that stock;
 - (c) BMIS sells that stock; and
 - (d) The Fund buys that stock.
44. (The opposite would happen for transactions involving sales out of the relevant Fund). Between element (b) and (c), BMIS would either (i) act as principal and charge a mark-up/mark-down; or (ii) act as agent to the Fund and charge a commission.

Disclosure to third parties of BMIS's role as investment advisor to the Kingate Funds

45. BMIS's role as investment advisor to Euro and Global Kingate Funds was fully disclosed, including to potential investors.
46. The audited financial statements for Global Fund as at 31 December 2007 (tab 13), as prepared by PwC, contain the following disclosure regarding BMIS's role (Materially the same disclosure appears on previous audited financial statements of Global Fund):

"Investment advisor, broker-dealer, custodian and banker

The Company's investment advisor is Bernard L. Madoff Investment Securities LLC ("Madoff"), a New York based financial institution. Madoff also acts as the Company's broker-dealer for all equity, US Treasury and option transactions, these transactions being executed in certain instances with Madoff as the principal. During the year, the Company executed transactions of approximately \$58 billion (2006 \$48 billion). Madoff's only form of remuneration is from any principal spread and/or commission on the transactions. Madoff also acts as custodian for investment assets of the Company.

...

47. The audited financial statements for Euro Fund as at 31 December 2007 (tab 14), again as prepared by PwC, contain the following disclosure regarding BMIS's role (materially the same disclosure appears on previous audited financial statements of Euro Fund):

"Investment advisor, broker-dealer, custodian and banker

The Company's investment advisor is Madoff, a New York based financial institution. Madoff also acts as the Company's broker-dealer for all equity, US